

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

DURAN IRVIN, )  
Plaintiff, )  
 )  
v. ) C.A. No. 04-10295-WGY  
 )  
ANDREA CABRAL, et al., )  
Defendants. )

MEMORANDUM AND ORDER

For the reasons stated below, this action is dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

BACKGROUND

Plaintiff is an inmate currently incarcerated at the Suffolk County House of Correction. On January 20, 2004, plaintiff filed a pro se complaint challenging the conditions in the protective custody unit at the Suffolk County House of Correction. Since that time, the Court issued several orders denying without prejudice plaintiff's Applications to Proceed Without Prepayment of Fees. See Docket Nos. 5, 8, and 11.

Because plaintiff did not respond to the Court's April 9, 2004 Order, the Court entered an Order in August granting plaintiff until October 5, 2004 to file a new Application to Proceed Without Prepayment of Fees. See 8/24/04 Order, Docket No. 13. The Order advised plaintiff that if he fails to timely file a new Application to Proceed Without Prepayment of Fees, this action will be dismissed without prejudice. Id.

The Court's records indicate that plaintiff has not filed an Application to Proceed Without Prepayment of Fees.

DISCUSSION

Under Federal Rule of Civil Procedure 41(b), a court may dismiss a claim "for failure of the plaintiff to prosecute or to comply with these rules or any order of the court." See Link v. Wabash R.R. Co., 370 U.S. 626, 630-31 (1962). This authority flows from a Court's inherent power to control its docket, prevent undue delays in the disposition of pending cases, and avoid congested court calendars. Id. at 629-31.

Since April 2004, the Court has issued two orders directing plaintiff to file an Application to Proceed Without Prepayment of Fees. See Docket Nos. 11, 13. To date, plaintiff has failed to comply with both of these Court orders and has failed to file an Application to Proceed Without Prepayment of Fees. Accordingly, the Court will dismiss his complaint without prejudice pursuant to Rule 41(b) for failure to follow an order of the Court.

ORDER

Based upon the foregoing, it is hereby ORDERED that this action is dismissed without prejudice pursuant to Rule 41(b)

of the Federal Rules of Civil Procedure.

SO ORDERED.

Dated at Boston, Massachusetts, this 27<sup>th</sup> day of October, 2004.

/s/ William G. Young

WILLIAM G. YOUNG

CHIEF UNITED STATES DISTRICT JUDGE